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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

No. C 10-00455 WHA

Plaintiff,

v.

MARCEL DARON KING,

Defendant.

**ORDER REGARDING FORMAT
OF PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF
LAW AFTER EVIDENTIARY
HEARING**

The government shall submit proposed findings of fact and conclusions of law. The defendant may, but is not required to, submit proposed findings of fact and conclusions of law (but must submit its opposition to the government's proposed findings). The parties may also file accompanying briefs. The parties will agree on a reasonable submission schedule. Here are the details.

First, the government shall file and serve by email proposed findings of fact, each identified by number. Each proposed finding should be concise and limited to one or two or (at most) three lines of text (exclusive of any block quotes from trial exhibits) followed by exact trial record cites fully supporting the proposed finding. The proposals should be at a level of specificity/generality so as to fit within the page limit set forth below. As a rule of thumb, less controversial subjects may be captured in more generalized proposed findings; more controversial subjects, however, usually require greater specificity and more proposed findings. Block quotes and record cites may be single-spaced (and indented) but otherwise the proposals should be double-spaced. Example:

1 1. When defendant went through the intersection of
2 Hayes and Gough, the light was red in his direction.

Jones at RT 97:1-3
Young at RT 15:11-12

The same submission should also set forth each proposed conclusion of law. Each proposed conclusion of law must briefly identify the proposed findings of fact supporting the conclusion *and* the legal authority therefor (quoting the key language of said authority). The overall length of the submission must be 10 pages or less. The government may separately file an accompanying brief of no more than 10 pages.

Second, defendant is permitted but not required to file and serve by email a proposed findings of fact that responds to the government's proposed finding of fact. The response should state, separately as to each proposed finding by the government, any disagreement with the proposed finding, especially if defendant disputes the accuracy of citations to the record. Defense counsel may contest whether the record supports the proposed finding of fact if he has a good faith basis for such a contention. To the extent that defendant objects in any respect to the proposed finding, he should state (i) the extent to which the opposition is based on a failure of the record cites to support the proposal (explaining why they do not support it) and (ii) the extent to which the objection is based on contrary evidence (citing the contrary evidence) or lack of credibility (citing relevant evidence). Example:

1. Agree that the light was red but the light had just
changed a split second before.

Mack RT 42:17-18

The submission may similarly state the extent to which the defendant agrees with each conclusion of law proposed by the other side. If there is any disagreement, defendant should state (i) the extent to which the disagreement is based on a failure of the supporting findings, (ii) the extent to which the disagreement is based on a failure of the cited authorities to support the conclusion, and (iii) the extent to which contrary authorities contradict the legal basis for the proposed conclusion.

1 Defendant's responding submission should reproduce exactly each original finding or
2 conclusion by the government and then, immediately after each, supply the responsive
3 information. It may not exceed 20 pages. Defendant may separately file an accompanying brief
4 of no more than 10 pages.

5 *Third*, the government shall then submit a reply including to any proposed findings of
6 fact by the defense that conforms to the procedures outlined above. The government's reply
7 submission should reproduce each original defense finding or conclusion and then, immediately
8 after each, list the government's responsive information. It may not exceed 20 pages. The
9 government may also file an accompanying reply brief of no more than 5 pages.

10 Any objection to this procedure shall be raised **BY SEPTEMBER 30, 2016**.

11 The parties are asked to submit a joint exhibit list.

13 **IT IS SO ORDERED.**

15 Dated: September 28, 2016.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE